

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CINDY KOONCE, individually and on behalf of all others similarly situated,

Plaintiffs,

- against -

SAZERAC COMPANY INC.,

Defendant.

No. 7:23-cv-4323-KMK

**NOTICE OF GRANTING OF
RULE 23(f) PETITION IN *MYERS
V. SAZERAC COMPANY, INC.***

Defendant Sazerac Company, Inc. (“Sazerac”) submits this Notice to inform the Court that the United States Court of Appeals for the Ninth Circuit, on July 31, 2025, granted Sazerac’s Fed. R. Civ. P. 23(f) petition for permission to appeal from a class certification order in *Myers v. Sazerac Company, Inc.*, Case No. 3:23-cv-00522-EMC (N.D. Cal.). The issues on appeal in *Myers* are relevant here: (1) whether class certification must be denied where plaintiffs’ alleged class-wide measure of damages is based on a conjoint survey of persons other than actual or likely purchasers of the product at issue; (2) whether class certification must be denied where plaintiffs’ alleged class-wide measure of damages is based on a conjoint survey that fails to take account of a primary factor in consumers’ purchase decisions, such as convenience; and (3) whether use of “actual market prices” and “actual [historical] volumes sold” in a conjoint survey purporting to measure consumer *demand* does not adequately account for supply-side factors, rendering a “price premium” analysis incapable of establishing class-wide

damages. Sazerac will inform the Court of further developments in the Ninth Circuit appeal.

Dated: August 4, 2025

Respectfully submitted,

/s/ Creighton R. Magid
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*Attorneys for Defendant Sazerac
Company, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 4, 2025, I hereby certify that a true and correct copy of the foregoing NOTICE OF GRANTING OF RULE 23(f) PETITION IN *MYERS V. SAZERAC COMPANY, INC.* was served on all counsel of record via this Court's CM/ECF electronic filing system.

/s/ Creighton R. Magid

Creighton R. Magid